IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1557 OF 2005

Shri Vishwanath Dattu Salunkhe ...Appellant
Vs.
Shri Tulshiram Vishnu Padale ...Respondent

Mr Sandeep Bhagwat for the Appellant.
Mr S.V. Sadavarte for the Respondent.

CORAM : A. S. OKA, J.
DATE : MARCH 09, 2006.

P.C.:

1. Heard the learned Advocate appearing for the Appellants. The Respondent No.1 is the original Plaintiff. The Respondent No.1 filed a suit for partition, declaration and injunction. The said suit was decreed on 06th February, 2003. The original Defendants in the suit preferred an Appeal to the District Court for challenging the decree passed in favour of the Respondent No.1. The said Appeal was presented on 28th March, 2003. On the said Appeal, an order was passed on 01st April, 2003 directing that notice should be issued to the Respondents in the Appeal. Some of the original Defendants sold part of the suit property in favour of the Appellants in this Second Appeal on 20th May, 2003. When the Respondent No.1-Plaintiff became aware about the sale in favour of the Appellants, he moved an Application for amendment before the Appellate Court. Accordingly, the Appellants herein who are the purchasers were impleaded as party Respondents to the Appeal. As per

the order passed by the Appellate Court, the names of the Appellants herein were added as Defendants in the original suit. The Appeal preferred by the original Defendants was dismissed by the Appellate Court by the impugned Judgment and Decree.

2. The learned Counsel appearing for the Appellants submitted that during the course of hearing of the Appeal before the first Appellate Court, an oral request was made by the Advocate for the Appellants to permit the Appellants to lead evidence to show that they are the bonafide purchasers. However, the said request has not been favourably considered. He submitted that either the lower Appellate Court should have permitted the Appellants to lead evidence or the matter ought to have been remanded to the Trial Court.

3. The learned Counsel submitted that as opportunity to lead evidence was denied to the Appellants, they could not establish the fact that they were bonafide purchasers. The learned Counsel appearing for the Appellants further submitted that the fact of decree passed in favour of the Respondent No.1 and pendency of the Appeal in the District Court was suppressed by the vendors of the Appellants.

4. I have considered the submissions. It is obvious that the Appellants acquired part of the suit property from some of the original Defendants after decree was passed by the Trial Court in favour of the Respondent No.1. Moreover, when the Appellants purchased the property, Appeal preferred by the original Defendants in District Court was pending. Thus, the Appellants have purchased the property after decree was passed and during the pendency of the Appeal in first Appellate Court. Appeal is a continuation of proceeding of the suit and that is the reason why section 52 of the Transfer of Property Act, 1882 will squarely apply to the transfer in favour of the Appellants.

5. In view of the applicability of section 52 of the Transfer of Property Act, 1882, the alleged lack of knowledge on part of the Appellants regarding the decree passed and pendency of the Appeal is irrelevant. There was no question of permitting the Appellants to lead evidence for establishing that they were the bonafide purchasers. The Appellants are claiming through some of the Defendants who had already suffered the decree when the Appellants purchased the part of the suit property.

6. There is no merit in the Second Appeal as no

substantial question of law arises. Appeal is dismissed.

JUDGE